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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1976

No. 75-5444

EHRLICH ANTHONY COKER,

Petitioner,

-v.-

STATE OF GEORGIA,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

REPLY BRIEF FOR PETITIONER

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The sole purpose of this Reply Brief is to update three factual representations contained in the Brief for Petitioner:

(1) Pages 38-42 note that six States had enacted statutes in the wake of Furman v. Georgia, 408 U.S. 238 (1972), authorizing capital punishment for any rape-like offense, and that two of these statutes (North Carolina's and Louisiana's) had been effectively invalidated by this Court's decisions in Woodson v. North Carolina, 49 L.Ed.2d 944 (1976), and Roberts v. Louisiana, 49 L.Ed.2d 974 (1976). The Tennessee statute has since been invalidated under Woodson and Roberts, see Collins v. State, Tenn. Sup. Ct., No. 63 (Hamblen Crim.)(Jan. 24, 1977), with the result that only three American jurisdictions now provide the death penalty for any sex offense not resulting in the death of the victim: Georgia, for rape; and Mississippi and Florida, for certain rapes of young children. Not one of the new capital punishment statutes enacted since July 2, 1976, has authorized the death penalty for any kind of rape. 1/

1/ 1976 Okla. Sess. Laws, c. 1, p. 627 (First Extraord. Sess.)(July 23, 1976); La. Acts 1976, No. 316 (Aug. 1, 1976), La. Acts 1976 No. 694 (Aug. 2, 1976); 1976 Ky. Acts, c. 15 (Extraord. Sess.) (Dec. 22, 1976); 1977 Wyo. Sess. Laws, c. 122 (Feb. 28, 1977). In three other States, death penalty legislation has passed both Houses of the Legislature and awaits gubernatorial action; in none of these bills has the death penalty been authorized for any kind of sex offense not resulting in the death of the victim: N.J. S.B. 639 (passed Senate, Jan. 11, 1977; passed Assembly, Jan. 31, 1977)(1977 Sess.); Va. H.B. 1329 (passed House of Delegates, Feb. 10, 1977; passed Senate, Mar. 3, 1977)(1977 Assembly Sess.); Md. S.B. 106 (passed Senate, Feb. 25, 1977), Md. H.B. 785 (favorable report, House of Delegates, Mar. 11, 1977) (1977 Sess.).

(2) Page 43 and n.41 state that there are presently five persons in the United States on death row for rape-like offenses. The Supreme Court of Florida has since set aside the sentences of two persons condemned in that State for sexual battery of a child. See Purdy v. State, Fla. Sup. Ct. No. 47074 (Feb. 3, 1977); Huckaby v. State, Fla. Sup. Ct. No. 47736 (Feb. 17, 1977). Three other death sentences for rape-like offenses have come to our attention: State of Georgia v. Donald Boyer, Chatham County (Ga.) Super. Ct. No. 23816 (death sentence for rape imposed Dec. 18, 1975); State of Georgia v. Willie James Hughes, Burke County (Ga.) Super.Ct. No. 1330 (death sentence for rape imposed Dec. 1, 1976); State of Florida v. William Horace Shue, Jr., Circuit Ct. for the Fifth Jud. Dist. in and for Marion County (Fla.) No. 75-508 (death sentence for sexual battery imposed Feb. 7, 1977; jury's advisory verdict had recommended life imprisonment). Petitioner therefore now appears to be one of six persons in this country now under sentence of death for such an offense.[2/]

2/ This group consists of petitioner, Messrs. Boyer, Hughes, and Shue, supra; John Wallace Eberheart, No. 74-5174 (pending in this Court on petition for certiorari); and John Wesley Hooks, No. 74-5954 (pending in this Court on petition for certiorari). See Brief for Petitioner at 43 n.41, Brief for Respondent at 20.

(3) Appendix B, at 1b-3b, states that forty-two reported rape cases arising under the 1973 capital punishment statute have been reviewed by the Georgia Supreme Court. Since the filing of the Brief for Petitioner, twenty-one more such cases have been reported, none involving the imposition of the death penalty.[3/]

3/ Long v. State, 237 Ga. 110, 227 S.E.2d 22 (1976); Marks, Head, Wright & Kemp v. State, 237 Ga. 277, 227 S.E.2d 334 (1976); Hinton & Newman v. State, 237 Ga. 376, 228 S.E.2d 790 (1976); Williams v. State, 237 Ga. 399, 228 S.E.2d 806 (1976); Williams v. State, 237 Ga. 425, 228 S.E.2d 822 (1976); Young v. State, 237 Ga. 470, 228 S.E.2d 856 (1976); Harris v. State, 237 Ga. 522, 228 S.E.2d 897 (1976)(an unnamed codefendant was also convicted but did not appeal); Wilson v. State, 237 Ga. 657, 229 S.E.2d 424 (1976); Thomas v. State, 237 Ga. 690, 229 S.E.2d 458 (1976); Byrd v. State, 237 Ga. 781, 229 S.E.2d 631 (1976); Miller v. State, 237 Ga. 823, 229 S.E.2d 648 (1976); Dorris v. State, 237 Ga. 837, 229 S.E.2d 638 (1976); Glover v. State, __Ga.__, 230 S.E.2d 293 (1976); Bailey v. State, __Ga.__, 230 S.E.2d 311 (1976); Scott & Light v. State, __Ga.__, 230 S.E.2d 857 (1976); Tiller v. State, __Ga.__, 230 S.E.2d 874 (1976). Welch, Swain & Harris v. State (see Brief for Petitioner at 45, 2b n.4b) has been reported and appears at 237 Ga. 665, 229 S.E.2d 390 (1976).

Imposition of the death penalty for rape is unconstitutionally excessive and therefore violates the Eighth Amendment.

Respectfully submitted,

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